



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release number: **200824022**

Release Date: 6/13/08

Date: March 20, 2008

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL:

507.00-00

4941.04-00

4945.00-00

Legend:

Husband =

Trust =

Date 1 =

Wife =

Foundation =

Date 2 =

Trust A =

Trust B =

Foundation A =

Foundation B =

Dear:

We have considered your ruling request dated November 21, 2006, concerning the federal income and excise tax consequences under sections 507, 4941, and 4945 of the Internal Revenue Code, related to a proposed transfer of assets, in the manner and for the purposes described below.

Facts

Husband created Trust, a charitable remainder unitrust within the meaning of section 664(d)(2) of the Internal Revenue Code of 1986, as amended, (hereafter "Code") on Date 1. Trust is irrevocable.

Trust provides generally that in each taxable year of the trust, the trustee shall pay a unitrust amount equal to 7% to Husband during his lifetime, and after his death, to Wife for such time as she survives. Upon the death of the survivor of Husband and Wife, the trustee shall distribute all of the then remaining principal and income of Trust to exempt charitable organizations described in sections 170(c), 2055(a), and 2522(a) of

the Code as designated by Husband. In the absence of such designation by Husband, trustee shall distribute all of the then remaining principal and income of Trust to Foundation, if it is described under sections 170(c), 2055(a), and 2522(a), and if it is not so described, then to one or more exempt charities described in sections 170(c), 2055(a), and 2522(a) as the trustee shall determine.

Husband and Wife entered into a marriage separation agreement on Date 2 to settle their marital and property rights. Their marriage separation agreement provided that Trust would be divided into two separate and equal trusts, known as Trust A and Trust B. Each trust is intended to qualify as a charitable remainder unitrust under section 664(d)(2) of the Code. As proposed, the assets of Trust will be divided equally in kind between Trust A and Trust B.

Trust A and Trust B will be identical to Trust except that (i) Husband will be the unitrust beneficiary of Trust A and Wife will be the unitrust beneficiary of Trust B; (ii) each spouse will retain a survivorship interest in the other's unitrust amount; (iii) Husband will have the right to designate the charitable beneficiaries of Trust A and Wife will have the right to designate the charitable beneficiaries of Trust B; (iv) the surviving spouse will not be permitted to appoint or change the charitable beneficiaries of the other spouse's new trust; (v) Husband will designate Foundation A (a private foundation), as the charitable remainder beneficiary of Trust A and Wife will designate Foundation B (a private foundation), as the charitable remainder beneficiary of Trust B (unless Husband and Wife designate an alternate charity as the remainder beneficiary); and (vi) Husband will appoint an independent trustee of Trust A and Wife will appoint an independent trustee of Trust B.

The trustee of Trust has tentatively approved the division of Trust into Trust A and Trust B. However, the final dissolution of Trust and its division into Trust A and Trust B is contingent upon a favorable private letter ruling.

You have requested the following rulings:

1. The division of Trust will not result in tax under section 507(c) of the Code that applies upon the termination of a charitable remainder trust's status as a private foundation.
2. The division of Trust will not be an act of self-dealing under section 4941 of the Code; furthermore, the distributions of unitrust amounts from Trust A to Husband, and the distributions of unitrust amounts from Trust B to Wife, will not be acts of self-dealing under section 4941 of the Code.
3. The division of Trust will not be a taxable expenditure under section 4945 of the Code and consequently there will be no obligation on Trust to exercise expenditure responsibility under section 4945(d) and (h) of the Code.
4. With respect to the legal fees and filing fees incurred in the preparation of this ruling request, payment by the trustee of Trust of a portion of such fees that reasonably represents the portion of this ruling request that is intended to protect the trustees of Trust, Trust A and Trust B, will not be an act of self-dealing under section 4941 of the Code and will not be taxable expenditures under section 4945 of the Code.

## Statement of the Law

Under section 4947(a)(2), sections 507, 4941 and 4945 apply to certain "split interest" trusts (trusts with both charitable and non-charitable beneficiaries) as if they were private foundations.

Section 507(a) provides that, except as provided in section 507(b), a private foundation may terminate its private foundation status only under the specific rules set forth in section 507(a).

Section 507(b)(2) provides that in the case of the transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization, the transferee foundation shall not be treated as a newly created organization.

Section 507(c) imposes a termination tax equal to certain defined amounts, which are generally the lower of the "aggregate tax benefit" resulting from the tax exempt status or the fair market value of the assets.

Section 4941(a)(1) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(a)(2) imposes an excise tax on the participation of a foundation manager in an act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(E) provides that the term "self-dealing" means any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4945 imposes an excise tax on a private foundation's making of any taxable expenditure under section 4945(d).

Section 4945(d)(4) provides the term "taxable expenditure" includes a grant to a private foundation unless the grantor exercises expenditure responsibility in accordance with § 4945(h).

Section 4946(a) provides the term "disqualified person" with respect to a private foundation includes a substantial contributor to the foundation (including the creator of a trust), and a foundation manager (including a trustee).

Section 4947(a)(2) provides generally that split-interest trusts are subject to the provisions of sections 507, 4941 and 4945 in the same manner as if such trusts were private foundations, but, under section 4947(a)(2)(A), not with respect to any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B).

Section 1.507-3(d) provides that unless a private foundation voluntarily gives notice pursuant to section 507(a)(1), a transfer of assets described in section 507(b)(2) will not constitute a termination of the transferor's private foundation status under section 507(a)(1)

Section 1.507-1(b)(6) provides that if a private foundation transfers all or part of its assets to one or more other private foundations pursuant to a transfer described in

section 507(b)(2), such transferor foundation will not have terminated its foundation status under section 507(a)(1).

Section 1.507-3(c)(1) provides that as used in section 507(b)(2), the term "other adjustment, organization or reorganization" shall include any partial liquidation or any other significant disposition of assets to one or more private foundations.

Section 1.507-3(c)(2)(ii) provides that the term "significant disposition of assets" means the transfer of 25% or more of the net assets of the foundation at the beginning of the year, which disposition may be made in a single year or in a series of related dispositions over more than one year.

Sections 1.507-3(a)(1) and 3(a)(2)(i) provide that in the transfer of assets from one private foundation to one or more private foundations in a section 507(b)(2) transfer, each transferee private foundation shall not be treated as a newly created organization, but shall succeed to the transferor's aggregate tax benefit within the meaning of section 507(d), in proportion to the assets transferred to each.

Section 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations that are effectively controlled, directly or indirectly, by the same person or persons that effectively controlled the transferor foundation, such transferee private foundation shall be treated as if it were the transferor private foundation for purposes of section 4940 through 4948 and sections 507 through 509.

Section 1.507-3(b) provides, in pertinent part, that a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to an organization that is treated as described in section 501(c)(3) by virtue of section 4947 is not a taxable expenditure under section 4945(d).

Section 53.4945-6(b)(2) of the Foundation and Similar Excise Taxes Regulations provides that expenditures for unreasonable administrative expenses, including compensation, consultant fees, and other fees for services rendered, will ordinarily be taxable expenditures under section 4945(d)(5) unless the foundation can demonstrate that such expenses were paid or incurred in the good faith belief that they were reasonable and that the payment or incurrence of such expenses in such amounts was consistent with ordinary business care and prudence.

Section 53.4947-1(c)(2)(i) provides that under section 4947(a)(2)(A), section 4941 does not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B) with respect to the income interest of any such beneficiary.

Rev. Rul. 2002-28, 2002-1 C.B. 941 provides that when a private foundation transfers all of its assets to other foundations in a § 507(b)(2) transfer there are no expenditure responsibility requirements under § 4945(d)(4) or (h) with respect to the transfers because the transferee foundations are treated as the transferor.

## Analysis

### Ruling 1

The division of Trust will not result in a termination tax under section 507(c) of the



Code.

Trust is a charitable remainder unitrust under section 664(d)(2). A charitable remainder unitrust is a split-interest trust described in section 4947(a)(2), and therefore, treated generally as if it were a private foundation and subject to section 507 termination rules. Although split interest trusts are not section 501(c)(3) or section 4947(a)(1) private foundations that are exclusively charitable, they are subject to section 507 termination rules that are appropriate. The proposed transfer of 100 percent of Trust's assets, under the prevailing divorce proceedings, to Trust A and Trust B will qualify as transfers meeting the requirements of a "significant disposition of assets" under sections 1.507-3(c)(1) and (2)(ii). Accordingly, under section 1.507-3(a)(1), the proposed transfer will not result in Trust A and Trust B being treated as newly created private foundations. Furthermore, there will not be an imposition of an excise tax under section 507(c) because the transferor trust, Trust, has not given notice of its intent to terminate.

Therefore, the division of Trust will not result in tax under section 507(c) of the Code that applies upon the termination of a charitable remainder trust's status as a private foundation.

#### Ruling 2

The division of Trust will not be an act of self-dealing under section 4941 of the Code; furthermore, the distributions of unitrust amounts from Trust A to Husband, and the distributions of unitrust amounts from Trust B to Wife, will not be acts of self-dealing under section 4941 of the Code.

Generally under section 4946, Husband and Wife are disqualified persons with respect to Trust. Section 4941 imposes a tax on acts of self dealing by disqualified persons. However, the only interest that either Husband or Wife have in Trust is the payment of the unitrust amount under the provisions of section 664(d)(2). Husband and Wife have exchanged a unitrust (and a contingent survivor's unitrust interest) payment in Trust for a full unitrust payment in Trust A and Trust B, respectively, having fewer assets, namely 50 percent of the assets of Trust, prior to its division. Thus, they are in the aggregate, likely to receive the same unitrust payment as before. Under section 53.4947-1(c)(2), the amounts payable under charitable remainder split-interest trusts to income beneficiaries are not subject to section 4941. Thus, the disqualified persons are insulated from self-dealing as far as each of their income interests in Trust are concerned based on the fact that the unitrust payment is the same before and after the division of Trust. Because none of the disqualified persons receive any interest in Trust principal, no self-dealing transaction has occurred within the meaning of section 4941(d).

Therefore, the division of Trust and distributions of unitrust amounts from Trust A to Husband and from Trust B to Wife, will not be acts of self-dealing under section 4941 of the Code.

#### Ruling 3

The division of Trust will not be a taxable expenditure under section 4945 of the Code and consequently there will be no obligation on Trust to exercise expenditure responsibility under section 4945(d) and (h) of the Code. As described more fully in Ruling 1, a transfer of assets pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization or reorganization to an organization that is treated as described in section 501(c)(3) by virtue of section 4947 is not a taxable expenditure under section 4945(d). Because Trust A and Trust B are treated as Trust,

there are no expenditure responsibility requirements that must be exercised by Trust under sections 4945(d)(4) or (h) with respect to the transfers. See also Rev. Rul. 2002-28. Therefore, the division of Trust will not be a taxable expenditure and will not result in the exercise of expenditure responsibility.

#### Ruling 4

With respect to the legal fees and filing fees incurred in the preparation of this ruling request, payment by the trustee of Trust of a portion of such fees that reasonably represent the portion of this ruling request that is intended to protect the trustees of Trust, Trust A and Trust B, will not be an act of self-dealing under section 4941 of the Code and will not be taxable expenditures under section 4945 of the Code.

Under section 53.4945-6(b)(2), legal fees and other expenses incurred by a trust in a good faith belief that they are reasonable and consistent with ordinary care and prudence, will not constitute taxable expenditures. No act of self-dealing or taxable expenditure will occur within the meaning of sections 4941 and 4945 respectively, to the extent that the expenses are reasonable and proportionate to the Trust's tax risk. Herein, trust principal remains preserved for charitable interests. There has not been an increase in the unitrust amount at the expense of the charitable interest. There are no other transactions with the income beneficiaries that affect the trust principal. Any expenses paid pursuant to the division of Trust, assuming such expenses are reasonable, are justified as necessary to carry out Trust purpose to facilitate the smooth functioning and operation of Trust, which was likely not possible under the prevailing divorce proceedings.

Therefore, if reasonable in amount, payment from Trust assets of legal fees and other expenditures incurred by Trust to effectuate the division of Trust to Trust A and Trust B will not constitute an act of self-dealing under section 4941, nor will it constitute taxable expenditures under section 4945.

Accordingly, based upon the information submitted in your ruling request, we rule as follows:

1. The division of Trust will not result in tax under section 507(c) of the Code that applies upon the termination of a charitable remainder trust's status as a private foundation.
2. The division of Trust will not be an act of self-dealing under section 4941 of the Code; furthermore, the distributions of unitrust amounts from Trust A to Husband, and the distributions of unitrust amounts from Trust B to Wife, will not be acts of self-dealing under section 4941 of the Code.
3. The division of Trust will not be a taxable expenditure under section 4945 of the Code and consequently there will be no obligation on Trust to exercise expenditure responsibility under section 4945(d) and (h) of the Code.
4. With respect to the legal fees and filing fees incurred in the preparation of this ruling request, payment by the Trustee of Trust of a portion of such fees that reasonably represents the portion of this ruling request that is intended to protect the Trustees of Trust, Trust A and Trust B, will not be an act of self-dealing under section 4941 of the Code and will not be taxable expenditures under section 4945 of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Robert C. Harper, Jr.  
Manager, Exempt Organizations  
Technical Group 3

Enclosure  
Notice 437